

FILED
MAY 23 1994

OFFICE OF THE CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1993

U.S. TERM LIMITS, INC., *et al.*,
v. *Petitioners,*

RAY THORNTON, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the
Supreme Court of Arkansas

BRIEF FOR THE STATE RESPONDENT

J. WINSTON BRYANT *

Attorney General

JEFFREY A. BELL

Deputy Attorney General

ANN PURVIS

Assistant Attorney General

200 Tower Building

323 Center Street

Little Rock, AR 72201

(501) 682-2007

GRIFFIN B. BELL

PAUL J. LARKIN, JR.

POLLY J. PRICE

KING & SPALDING

1730 Pennsylvania Ave., N.W.

Washington, D.C. 20006-4706

(202) 737-0500

CLETA DEATHERAGE MITCHELL

TERM LIMITS LEGAL INSTITUTE

900 Second St., N.E.

Suite 200A

Washington, D.C. 20002

(202) 371-0450

* Counsel of Record

Attorneys for Respondent

QUESTION PRESENTED

Amendment 73 to the Arkansas Constitution restricts access to the ballot for certain incumbent candidates for the offices of United States Representative and Senator. Amendment 73 provides that a person who has been elected to three or more terms as a member of the United States House of Representatives, or to two or more terms as a member of the United States Senate, cannot thereafter have his or her name placed on the ballot for that office, although a candidate may still be elected through a write-in campaign. The question presented by this case is the following:

Whether a state has the power under the Elections Clause of the Constitution, Art. I, § 4, Cl. 1, to restrict an incumbent candidate's access to the ballot in such a manner, or whether the Qualifications Clauses of the Constitution, Art. I, § 2, Cl. 2, and § 3, Cl. 3, prohibit a state from imposing such a ballot access restriction.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1993

No. 93-1456

U.S. TERM LIMITS, INC., *et al.*,
Petitioners,

v.

RAY THORNTON, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the
Supreme Court of Arkansas

BRIEF FOR THE STATE RESPONDENT

This case involves the constitutionality of a state election law restricting access to the ballot. As relevant here, Amendment 73 to the Arkansas Constitution provides that a person who has been elected to three or more terms as a member of the United States House of Representatives, or to two or more terms as a member of the United States Senate, cannot thereafter have his or her name placed on the ballot for that office, although a candidate may still be elected through a write-in campaign. Amendment 73 rests on the belief, as stated in its preamble, that "elected officials who remain in office too long become preoccupied with reelection and ignore their duties as representatives of the people." The Amend-

ment was designed to rectify the deleterious effects of "[e]ntrenched incumbency," which have included "reduced voter participation" and "an electoral system that is less free, less competitive, and less representative" than the one adopted by the Framers. The question presented by this case is whether a state has the power under the Elections Clause of the Constitution, Art. I, § 4, Cl. 1, to remedy those ills through Amendment 73, or whether the Qualifications Clauses of the Constitution, Art. I, § 2, Cl. 2, and § 3, Cl. 3, prohibit Arkansas from pursuing such corrective action.

The Attorney General of Arkansas, on behalf of the State of Arkansas, has filed a petition for a writ of certiorari, No. 93-1828 (filed May 16, 1994), seeking review of the judgment of the Supreme Court of Arkansas in this case. For the reasons given in that petition, the judgment below warrants review by this Court. If the Court grants the petition in this case, it should also grant the petition in No. 93-1828. In fact, because only the State of Arkansas has standing under Article III to defend the constitutionality of one of its laws, *Diamond v. Charles*, 476 U.S. 54, 64-71 (1986), the Court either should grant only the petition in No. 93-1828 or should grant both petitions and consolidate them.

Respectfully submitted,

J. WINSTON BRYANT *

Attorney General

JEFFREY A. BELL

Deputy Attorney General

ANN PURVIS

Assistant Attorney General

200 Tower Building

323 Center Street

Little Rock, AR 72201

(501) 682-2007

GRIFFIN B. BELL

PAUL J. LARKIN, JR.

POLLY J. PRICE

KING & SPALDING

1730 Pennsylvania Ave., N.W.

Washington, D.C. 20006-4706

(202) 737-0500

CLETA DEATHERAGE MITCHELL

TERM LIMITS LEGAL INSTITUTE

900 Second St., N.E.

Suite 200A

Washington, D.C. 20002

(202) 371-0450

* Counsel of Record

Attorneys for Respondent

May 1994